

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 27, 1999 at
3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: Rep. Bill Eggers (D)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)

Staff Present: Debbie Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJ 3
HB 102
HB 331

Executive Action: HB 124, PASS AS AMENDED
HJ 3, PASS

HEARING ON HOUSE JOINT RESOLUTION 3

Sponsor: Rep. Karl Ohs, HD 33, presented the bill. He explained the resolution would request that the Environmental Quality Council do a study on voluntary cleanup and redevelopment of contaminated properties in Montana. **EXHIBIT(nah21a01)** He described the work of the council that does interim work on environmental issues.

Proponents: Rep. Bill Tash, HD 34, spoke as a proponent to the resolution. He explained he was a member of the council. He described the Water Policy Subcommittee, chaired by Sen. McCarthy and himself. To make certain the objectives were met, the committee traveled to communities such as Missoula, the Beaverhead project, Kendall Mine and McDonald Gold Mine, to see the concerns firsthand. He noted the council has an effective policy to promote solutions from the ground up rather than the top down, appropriately tailored to the circumstances.

Jim Robinson, Department of Natural Resources, spoke in favor of the resolution. He said it was his job to facilitate the development of the state groundwater plan and facilitate tax incentives to encourage redevelopment of the site. **{Tape : 1; Side : A; Approx. Time Counter : 8.3}**

Bill Snoddy, representing the McDonald Gold Mine and a public member on the Environmental Quality Council, spoke in support of the resolution. He said there were certain sites that needed cleanup where there was no responsible party. This resolution encouraged a voluntary action plan to clean up sites, that otherwise may never be cleaned up. He encouraged the committee to pass the bill.

Bob Vogel, representing the Montana School Boards Association, testified in support of the bill. He said they had purchased property by the high school that needed clean up where this would apply. **{Tape : 1; Side : A; Approx. Time Counter : 11}**

Tony Schoonen, Butte, said he saw what cooperation could do. They used a grant for mine reclamation in Beaverhead County.

Opponents: None

Questions from Committee Members and Responses: Rep. Curtiss asked about a study of contaminated sites. Rep. Harper said many of the sites have been identified under the Abandoned Mines Program and a mini superfund program plus an EPA Superfund Program. Some were on the list and some not, such as water sheds that were not functioning because of damage in these areas that are not on a map. A more comprehensive list could be done with this study.

Rep. Curtiss said this was a good idea but we should be careful not to revisit something that had already been done. She asked about the federal tax incentive program.

Denise Mills, DEQ Remediation Division Administrator, replied that there was a comprehensive inventory of contaminated sites from 1995-1997. The Controlled Allocation of Liability Act was part of the state Superfund sites. Other studies were done and a number of sites looked at in different categories. This is a basis to start. Rep. Curtiss asked if there was new federal money available. Mills said there was no new money but the 1997 Balanced Budget Act provided for tax relief for land that was redeveloped and cleaned up.

Rep. McGee pointed out the ARCO suit and how the state was the antagonist and did not work things out with them. He asked if this area was on the list and if there were incentives would this have been handled more positively using the ideas envisioned in the resolution. Mills replied that the responsible party of the contamination should not benefit. ***{Tape : 1; Side : A; Approx. Time Counter : 21.2}***

Rep. Harper said this was a great idea. He asked if it was possible to broaden this picture to include barriers to effective cleanup. Developing incentives was great but someone should look at what barriers prevented the cleanup from being done.

Rep. Ohs said an amendment could be addressed in the work plan in the interim to look at incentives.

Rep. Tash noted this idea was relevant to the permitting process. The process was intended to supply solutions to existing problems in a more expedient way.

Closing by Sponsor: Rep. Ohs closed. He said the resolution will instruct the next EQC to take this as a priority. This is a path for the state to look up incentive programs to clean up sites.

HEARING ON HOUSE BILL 102

Sponsor: Rep. Stan Fisher, HD 75, presented the bill. He distributed handouts and amendments. **EXHIBIT(nah21a02), EXHIBIT(nah21a03), EXHIBIT(nah21a04)** He described the last 14 years his career dealt with the sale of surplus land. This turned into millions of dollars for the company which was used for reinvestment. These sales reduced property tax obligations of the company. The bill encompasses six points, as listed on Exhibit 2. He pointed out this would be a revenue source for Montana.

Proponents: None

Opponents: Marvin Dye, representing the Administration, spoke against a provision in the bill. He said they supported the concept of identifying properties, inventorying them, identifying those that are surplus, selling them and getting them back into the tax rolls and reporting to the Legislature. He pointed out a problem in section 5 which designates what is state surplus property. He explained an agency may have a piece of property they intend to use but it may not be possible in a short period of time. The agencies need flexibility in determining the use of these properties. The public sale of real estate needs to be addressed. Almost all the agencies have rules regarding acquisition and disposition of property. These should be followed. He pointed out the trust account dollars should be handled according to whatever rules or laws regulate those funds. A lot of the properties are bought with federal aid funds, for example. **{Tape : 1; Side : A; Approx. Time Counter : 33.6-37.9}**

A. Farrell Rose, chair of the Montana Real Estate Appraisal Board, representing himself, discussed changes that should be addressed. He explained in section 7, subsection b, last paragraph, "an appraiser should abide by the Department of Revenue", should be the Department of Commerce since that is the department appraisers are attached to and their duty is to protect the public. He pointed out section C says an appraisal is done by a member of the appraisal institute. He said there was a new state law that said no association can be singled out to do an appraisal.

Leroy Schramm, Chief Legal Council for the Montana University System, explained their position. He distributed some proposed amendments to the bill. Exhibit 4 He pointed out there was inconsistencies with existing law concerning the designation of surplus land. He said the school purchased land for potential expansion zones as the schools grew. There may be no present use but could be used as the years go by. The definition of surplus

land is inadequate to allow these types of situations. He noted another problem with the bill was the funds of the University from whatever source must be dedicated for University purposes. He referred to the amendment to remove the University land from the bill. Much of the land has been bequeathed to the University by will or trust.

Jim McDermid, Russell County Sportsman in Great Falls, spoke against the bill. He said the bill attempted to dispose of public lands. The bill ignores the value of public land for wildlife, recreation and other benefits. He noted that public land was the only land some people would ever own. Selling that land would be an injustice to future generations.

Tony Schoonen, representing the State Lands Coalition and the Public Lands Access Association, spoke against the bill. He felt HB 102 was terribly dangerous. He explained their group raised over \$100,000 to file a lawsuit to gain access to public lands.

He pointed out that average people could not compete in the bidding process. Large corporations and wealthy individuals would do the bidding. **EXHIBIT (nah21a05) {Tape : 1; Side : A; Approx. Time Counter : 51.4}**

Bill Holdorf, Skylines Recreation in Butte, spoke against the bill. He pointed out the state was receiving revenues from these lands. He said if someone purchased the parcel it may be the only access road to state land.

Van Jamison, representing Montana Wildlife Federation, spoke against the bill. He explained the federation had always been vigilant when it comes to protecting the public land base for multiple use. They believe the lands should be retained. There are a number of recreational uses that may not be recognized. The process appears to create more bureaucracy. **{Tape : 1; Side : A; Approx. Time Counter : 52.8}**

L.F. Thomas, Anaconda Sportsmen, spoke against the bill. He pointed out what was happening was the creation of more subdivisions. The bill would enable this to increase.

Nick Dodge, Anaconda Sportsmen, was against the bill. He said after the land was sold all you have left is the money and you don't have the land. Land is being privatized every day and there was not that much land to really let go.

Bill Orsello, Prickley Pare Sportsman Association in Helena, spoke against the bill. Public land should be conserved as much as possible. One of the bill issues driving all the conservation groups in Montana is the preservation of open space. This bill

is contrary in trying to preserve open space in Montana. This would facilitate a greater loss.

Informational Testimony: Bud Clinch, Director of the Department of Natural Resources and manager of the School Trust Lands, clarified the topic. He pointed out that those testifying did not really understand the bill. The intent of the bill does not pertain to any of those lands referred to as School Trust Lands and none of the lands that require recreational access. This bill addresses land that is owned by other agencies, such as the thousands of parcels owned by the Department of Transportation. For example, when they propose to expand or build a new road they are not always successful in buying a ribbon of right of way, they often have to buy that land in chunks of 40, 60 or 320 acres. They construct a road, build a fence for the right of way, and carry out their business. This means they often own surplus lands that are outside of that. Those lands don't show up on any map and are not available in terms of sportsmen access or as state lands. It is important to understand the intent of the bill. It is not intended to affect any of the trust lands.

{Tape : 1; Side : A; Approx. Time Counter : 57.3 - 60.1}

Questions from Committee Members and Responses: Rep. Younkin asked whether excess land from the Department of Transportation could be exposed of now. Tim Reardon, Chief Legal Counsel for the department, replied there was a section in Title 60 that deals with the disposition of property that had been acquired by the Department of Transportation. If it has an appraised value in excess of \$2500 it can go to public auction. There is a bill pending in another committee to raise that to \$5000. It includes provisions to do private sales if there are no bidders at public auctions. The proceeds of that money go back into special revenue fund or to repay the feds. This potentially is a loss in two ways. The loss of the land by selling it and the loss of the revenue because of repayment to the feds.

{Tape : 1; Side : B}

Rep. Dale asked how many small tracts existed outside of the right of way fences. Reardon replied there were 370 tracts, most were slivers with limited economic value.

Rep. Mood asked Rep. Fisher what the total parcels were state wide. Rep. Fisher responded there were several hundred. The value of the lands varied. He noted the Flathead Biological Station owned acres across the road they were trying to sell for \$89,000. That money should go into the general fund or the trust fund. He pointed out it was not the intention to take anything away from the sportsmen. If a piece of land was sold and it was

an access to the BLM land, an easement could be retained to make sure the sportsmen are not shut out.

Rep. Mood asked about the number of parcels. Clinch replied the agencies had been directed by the Legislative committee to begin a process of trying to bring these records together. Clyde Runy, Director of Special Uses at DNRC, charged with compiling this information, spoke to the committee. He said the state does not have a good handle on the inventory of those properties. These properties do not have recreational use. However, these property inventories are not complete and will not be complete without some direction.

Closing by Sponsor: Rep. Fisher closed. He pointed out the fiscal note was incorrect. He talked about the federal funding for the highway projects. Over a period of time the money they have to pay back to the federal government diminishes. He pointed out that the university property belongs to the people of Montana. **{Tape : 1; Side : B; Approx. Time Counter : 24 - 25.7}**

HEARING ON HOUSE BILL 331

Sponsor: Rep. Chris Ahner, HD 51, presented the bill. She said the bill relates to the clean up of properties under the federal and state Superfund laws. She described "institutional controls" which would provide solutions to protect public health or safety such as the installation of a fence or a sign. This bill will facilitate the last phase of the East Helena cleanup and should provide the same useful tool for other cleanup sites.

EXHIBIT(nah21a06) {Tape : 1; Side : B; Approx. Time Counter : 29.6}

Proponents: Jay Spickelmier, manager at Hydrometrics and Superfund Manager representing Asarco on the East Helena federal superfund site, spoke in favor of the bill. **EXHIBIT(nah21a07)** He described the \$15 million dollar cleanup at the site which included the removal of top soil. He pointed out the importance of continued activities to reduce exposure, such as dust control through vegetation. Due to soil disturbance or change of use, a mechanism needs to be available. An institutional control is a measure, short of actual expensive cleanup, that guards the public health or environment from the residual effects of contamination. Examples of these are fencing, signs, well or soil use advisories, well drilling restrictions, land use guidelines, or dust control measures **{Tape : 1; Side : B; Approx. Time Counter : 34.2-39.1}**

Joan Miles, Director of Lewis and Clark County Board of Health, spoke about the support for institutional controls. She explained another name for this was "remedy protection". EPA wants long term oversight so the sites are not disturbed. Clear authority is needed for the local governance to be in line with the EPA statute. This bill will provide for local oversight, has public review and input and is discretionary.

Frank Crowley, representing Asarco, spoke in favor of the bill. He pointed out the bill would also address other sites around the state. Many sites are a simple cleanup. However, urban areas have a greater need. He described the growing usefulness for certain types of controls. Institutional controls were cost effective when compared to emergency controls. **{Tape : 1; Side : B; Approx. Time Counter : 46}**

Terry Casey, City Council of East Helena and a representative to the Lewis and Clark County Board of Health, spoke in favor of the bill. He pointed out the EPA had asked them to do institutional controls. **{Tape : 1; Side : B; Approx. Time Counter : 51.6}**

Denise Mills, Remediation Division Director at Department of Natural Resources, spoke in favor of the bill. She pointed out that institutional controls are clearly defined in the provisions of the Superfund. These controls allow for continued precautions for the environment and public safety.

Mary Ellen, representing Western Environmental Trade Association, supported HB 331 because it confirmed the availability of another option for addressing the cleanup of the environment and maintaining it properly. Institutional controls can increase the flexibility for the agencies and those doing the cleanup for solutions that are cost effective and protective. **{Tape : 1; Side : B; Approx. Time Counter : 54.1}**

Opponents: None

Questions from Committee Members and Responses: Rep. McGee asked Ms. Miles about the remedy protection measures. He asked where this term came from. Miles replied the term "institutional control" was in use for a while and was now in the statute. EPA is starting to use "remedy protection measures" in place of institutional controls. Rep. McGee asked if this term could be amended into the bill.

Rep. Hurdle asked Ms. Mills about information regarding the cleanup stage such as the East Helena smelter site. Mills replied the cleanup and activities at the smelter and surrounding property are about 90 percent clean. Now a record of decision

needs to be in place and to get to that point the EPA has to come up with a plan for the cleanup. At this point the institutional control measure or remedy protection measure is a mechanism to see that the cleanup is completed. The soil cleanup is nearly complete. The institutional controls are seen as an essential piece to make that safe and to restrict public access.

Closing by Sponsor: Rep. Ahner closed. She noted the cleanup was 90% complete and there had been soil replacements in East Helena for 578 sites. She described the close cooperation with the citizens, the EPA and the local board of health who have worked hard to make this work and addressed any problems. Asarco is held in very high esteem and has worked well with this project.

{Tape : 2; Side : A}

EXECUTIVE ACTION ON HOUSE BILL 124

Rep. Ohs **MOVED DO PASS.**

Rep. Tuss presented an amendment. **EXHIBIT (nah21a08)** She explained the idea in the bill was good and the goals for the special revenue account were noble up to a point. She was concerned about the adoption and implementation of rural subdivision building codes. She pointed out the amount of costs of supplementals to cover fire fighting. One of the goals of the special revenue account was to increase the amount collected from the careless fire setters, currently at 47% with a goal of 100%. It was her thought if the amount was reduced that the department got they could come back when their collections recovery rate was at a better percentage and ask for the money that they needed.

Rep. Tuss **MOVED** the amendment. She proposed to give the department \$60 thousand dollars where they could do a better job at getting the help they need for collection assistance and help for risk assessment and then they would have more money coming in from collection efforts. She said she was reluctant to give them \$100 thousand when the supplementals were often in the millions.

The question was called. The motion **FAILED** on a 10-10 roll call vote.

Rep. Younkin pointed out on line 23 the first \$100 thousand collected annually. It should say collected annually by the state. The preceding paragraph talks about liability. For clarity, on line 23 add "by the state". The question was called. The motion **PASSED UNANIMOUSLY.**

Rep. Younkin **MOVED DO PASS AS AMENDED.** The question was called.
The motion **PASSED UNANIMOUSLY.**

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 3

Rep. Younkin **MOVED DO PASS.** Rep. Harper pointed out the common barriers on line 14 was mentioned but he felt the EQC would do what was needed to be done.

The question was called. The motion **PASSED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. BILL TASH, Chairman

DEBBIE THOMPSON, Secretary

BT/DT

EXHIBIT (nah21aad)